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Letter dated 4 October 2018 from the Secretary-General addressed to the President of the Security Council

Further to a communication from the Registrar of the International Court of Justice and in compliance with paragraph 2 of Article 41 of the Statute of the Court, I have the honour to transmit herewith a copy of the order indicating provisional measures in the case concerning *Alleged Violations of the 1955 Treaty of Amity, Economic Relations, and Consular Rights* (*Islamic Republic of Iran v. United States of America*) (see annex).*

(*Signed*) António **Guterres**

* The annex is being circulated in the languages of submission only.

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Annex

[Original: English and French]

INTERNATIONAL COURT OF JUSTICE

YEAR 2018

2018
3 October
General List
No. 175

3 October 2018

ALLEGED VIOLATIONS OF THE 1955 TREATY OF AMITY, ECONOMIC RELATIONS, AND CONSULAR RIGHTS

(ISLAMIC REPUBLIC OF IRAN *v.* UNITED STATES OF AMERICA)

REQUEST FOR THE INDICATION OF PROVISIONAL MEASURES

ORDER

Present: *President* YUSUF; *Vice-President* XUE; *Judges* TOMKA, ABRAHAM, BENNOUNA, CANÇADO TRINDADE, GAJA, BHANDARI, ROBINSON, CRAWFORD, GEVORGIAN, SALAM, IWASAWA; *Judges* ad hoc BROWER, MOMTAZ; *Registrar* COUVREUR.

The International Court of Justice,

Composed as above,

After deliberation,

Having regard to Articles 41 and 48 of the Statute of the Court and Articles 73, 74 and 75 of the Rules of Court,

Makes the following Order:

Whereas:

1. On 16 July 2018, the Islamic Republic of Iran (hereinafter referred to as "Iran") filed in the Registry of the Court an Application instituting proceedings against the United States of America (hereinafter referred to as the "United States") with regard to alleged violations of the Treaty of Amity, Economic Relations, and Consular Rights between Iran and the United States of America, which was signed at Tehran on 15 August 1955 and entered into force on 16 June 1957 (hereinafter the "Treaty of Amity" or the "1955 Treaty").

2. At the end of its Application, Iran requests the Court to adjudge, order and declare that:

"a. The USA, through the 8 May and announced further sanctions referred to in the present Application, with respect to Iran, Iranian nationals and companies, has breached its obligations to Iran under Articles IV (1), VII (1), VIII (1), VIII (2), IX (2) and X (1) of the Treaty of Amity;

b. The USA shall, by means of its own choosing, terminate the 8 May sanctions without delay;

c. The USA shall immediately terminate its threats with respect to the announced further sanctions referred to in the present Application;

d. The USA shall ensure that no steps shall be taken to circumvent the decision to be given by the Court in the present case and will give a guarantee of non-repetition of its violations of the Treaty of Amity;

e. The USA shall fully compensate Iran for the violation of its international legal obligations in an amount to be determined by the Court at a subsequent stage of the proceedings. Iran reserves the right to submit and present to the Court in due course a precise evaluation of the compensation owed by the USA."

3. In its Application, Iran seeks to found the Court's jurisdiction on Article 36, paragraph 1, of the Statute of the Court and on Article XXI, paragraph 2, of the 1955 Treaty.

4. On 16 July 2018, Iran also submitted a Request for the indication of provisional measures, referring to Article 41 of the Statute and to Articles 73, 74 and 75 of the Rules of Court.

5. At the end of its Request for the indication of provisional measures, Iran

"in its own right and as *parens patriae* of its nationals respectfully requests that, pending final judgment in this case, the Court indicate:

a. That the USA shall immediately take all measures at its disposal to ensure the suspension of the implementation and enforcement of all of the 8 May sanctions, including the extraterritorial sanctions, and refrain from imposing or threatening announced further sanctions and measures which might aggravate or extend the dispute submitted to the Court;

b. That the USA shall immediately allow the full implementation of transactions already licensed, generally or specifically, particularly for the sale or leasing of passenger aircraft, aircraft spare parts and equipment;

c. That the USA shall, within 3 months, report to the Court the action it has taken in pursuance of sub-paragraphs (a) and (b);

d. That the USA shall assure Iranian, US and non-US nationals and companies that it will comply with the Order of the Court, and shall cease any and all statements or actions that would dissuade US and non-US persons and entities from engaging or continuing to engage economically with Iran and Iranian nationals or companies;

e. That the USA shall refrain from taking any other measure that might prejudice the rights of Iran and Iranian nationals and companies under the Treaty of Amity with respect to any decision this Court might render on the merits."

6. The Registrar immediately communicated to the Government of the United States the Application, in accordance with Article 40, paragraph 2, of the Statute of the Court, and the Request for the indication of provisional measures, in accordance with Article 73, paragraph 2, of the Rules of Court. He also notified the Secretary-General of the United Nations of the filing of the Application and the Request by Iran.

7. Pending the notification provided for by Article 40, paragraph 3, of the Statute by transmission of the printed bilingual text of the Application to the Members of the United Nations through the Secretary-General, the Registrar informed those States of the filing of the Application and the Request.

8. By letters dated 18 July 2018, the Registrar informed the Parties that, pursuant to Article 74, paragraph 3, of its Rules, the Court had fixed 27, 28, 29 and 30 August 2018 as the dates for the oral proceedings on the Request for the indication of provisional measures.

9. On 18 July 2018, the Registrar informed both Parties that the Member of the Court of the nationality of the United States, referring to Article 24, paragraph 1, of the Statute, had notified the President of the Court of her intention not to participate in the decision of the case. Pursuant to Article 31 of the Statute and Article 37, paragraph 1, of the Rules of Court, the United States chose Mr. Charles Brower to sit as judge *ad hoc* in the case.

10. Since the Court included upon the Bench no judge of Iranian nationality, Iran proceeded to exercise the right conferred upon it by Article 31 of the Statute to choose a judge *ad hoc* to sit in the case; it chose Mr. Djamchid Momtaz.

11. On 23 July 2018, the President of the Court, acting in conformity with Article 74, paragraph 4, of the Rules of Court, addressed an urgent communication to the Secretary of State of the United States, calling upon the Government of the United States "to act in such a way as will enable any order the Court may make on the request for provisional measures to have its appropriate effects". A copy of that letter was transmitted to the Agent of Iran.

12. By a letter dated 27 July 2018, the Agent of the United States informed the Court that her Government "strongly object[ed] to Iran's Application on a number of grounds, and consider[ed] that the Court manifestly lack[ed] jurisdiction in respect of this case". She noted, in particular, that "[a]ll the elements of Iran's Application and Request for Provisional Measures [arose] from the Joint Comprehensive Plan of Action", which does not have a compromissory clause conferring jurisdiction on the International Court of Justice. The Agent further stated that "matters of which Iran complain[ed] [were] also outside the scope of the Treaty of Amity [of 1955] and beyond the limited jurisdictional grant provided by Article XXI (2), read in conjunction with Article XX (1), of the Treaty".

13. At the public hearings, oral observations on the Request for the indication of provisional measures were presented by:

On behalf of Iran: Mr. Mohsen Mohebi,
Mr. Alain Pellet,
Mr. Sean Aughey,
Mr. Samuel Wordsworth,
Mr. Jean-Marc Thouvenin.

On behalf of the United States: Ms Jennifer G. Newstead,
Mr. Donald Earl Childress III,
Ms Lisa J. Grosh,
Sir Daniel Bethlehem.

14. At the end of its second round of oral observations, Iran asked the Court to indicate the following provisional measures:

"(a) the United States shall immediately take all measures at its disposal to ensure the suspension of the implementation and enforcement of all of the 8 May sanctions, including the extraterritorial sanctions, and refrain from imposing or threatening announced further sanctions and measures which might aggravate or extend the dispute submitted to the Court;

(b) the United States shall immediately allow the full implementation of transactions already licensed, generally or specifically, particularly for the sale or leasing of passenger aircraft, aircraft spare parts and equipment;

(c) the United States shall, within 3 months, report to the Court the action it has taken in pursuance of sub-paragraphs (a) and (b);

(d) the United States shall assure Iranian, U.S. and non-U.S. nationals and companies that it will comply with the Order of the Court, and shall cease any and all statements or actions that would dissuade U.S. and non-U.S. persons and entities from engaging or continuing to engage economically with Iran and Iranian nationals or companies;

(e) the United States shall refrain from taking any other measure that might prejudice the rights of Iran and Iranian nationals and companies under the 1955 Treaty of Amity with respect to any decision this Court might render on the merits."

15. At the end of its second round of oral observations, the United States requested the Court to "reject the request for provisional measures filed by the Islamic Republic of Iran".

*

* *

I. FACTUAL BACKGROUND

16. Starting in 2006, the Security Council of the United Nations adopted a number of resolutions (1696 (2006), 1737 (2007), 1747 (2007), 1803 (2008), 1835 (2008) and 1929 (2010)), following reports by the International Atomic Energy Agency (hereinafter "IAEA") which were critical of Iran's compliance with its obligations under the Treaty on the Non-Proliferation of Nuclear Weapons (ratified by Iran in 1970), calling upon Iran to cease some of its nuclear activities. The Security Council also imposed sanctions in order to ensure compliance. Various States imposed additional "sanctions" on Iran.

17. On 14 July 2015, China, France, Germany, the Russian Federation, the United Kingdom and the United States, with the High Representative of the European Union for Foreign Affairs and Security Policy and the Islamic Republic of Iran, adopted a long-term Joint Comprehensive Plan of Action (hereinafter the "JCPOA" or the "Plan") concerning the nuclear programme of Iran. The declared purpose of that Plan was to ensure the exclusively peaceful nature of Iran's nuclear

programme and to produce "the comprehensive lifting of all UN Security Council sanctions as well as multilateral and national sanctions related to Iran's nuclear programme, including steps on access in areas of trade, technology, finance and energy". A Joint Commission was established to monitor the implementation of the JCPOA. The IAEA was requested to monitor and verify the implementation of the voluntary nuclear-related measures, as detailed in the relevant section of the JCPOA.

18. On 20 July 2015, the Security Council of the United Nations adopted resolution 2231 (2015), whereby it endorsed the JCPOA and urged its "full implementation on the timetable established in the JCPOA" (para. 1). In the same resolution, the Security Council provided, in particular, for the termination under certain conditions of provisions of previous Security Council resolutions on the Iranian nuclear issue (paras. 7-9) and set out measures of implementation of the JCPOA (paras. 16-20). The text of the JCPOA is contained in Annex A to Security Council resolution 2231 (2015).

19. On 16 January 2016, the President of the United States issued Executive Order 13716 revoking or amending a certain number of earlier Executive Orders on nuclear-related "sanctions" imposed on Iran or Iranian nationals.

20. On 8 May 2018, the President of the United States issued a National Security Presidential Memorandum announcing the end of the participation of the United States in the JCPOA and directing the reimposition of "sanctions lifted or waived in connection with the JCPOA". In the Memorandum, the President of the United States indicated that "Iranian or Iran-backed forces have gone on the march in Syria, Iraq, and Yemen, and continue to control parts of Lebanon and Gaza". He further stated that Iran had publicly declared that it would deny the IAEA access to military sites and that, in 2016, Iran had twice violated the JCPOA's heavy-water stockpile limits. The Presidential Memorandum determined that it was in the national interest of the United States to reimpose sanctions "as expeditiously as possible", and "in no case later than 180 days" from the date of the Memorandum. The Memorandum further specified, *inter alia*, that the Secretary of State and the Secretary of the Treasury were to prepare any necessary executive actions to "re-impose sanctions lifted by Executive Order 13716 of January 16, 2016"; to prepare to re-list persons removed, in connection with the JCPOA, from any relevant "sanctions lists", as appropriate; to revise relevant "sanctions regulations"; and to issue limited waivers during the wind-down period, as appropriate.

21. Simultaneously, the United States Department of the Treasury Office of Foreign Assets Control announced that "sanctions" would be reimposed in two steps. Upon expiry of a first wind-down period of 90 days, ending on 6 August 2018, the United States would reimpose a certain number of "sanctions" concerning, in particular, financial transactions, trade in metals, the importation of Iranian-origin carpets and foodstuffs, and the export of commercial passenger aircraft and related parts. Following a second wind-down period of 180 days, ending on 4 November 2018, the United States would reimpose additional "sanctions".

22. On 6 August 2018, the President of the United States issued Executive Order 13846 reimposing certain "sanctions" on Iran and Iranian nationals. In particular, Section 1 concerns "Blocking Sanctions Relating to Support for the Government of Iran's Purchase or Acquisition of U.S. Bank Notes or Precious Metals; Certain Iranian Persons; and Iran's Energy, Shipping, and Shipbuilding Sectors and Port Operators". Section 2 concerns "Correspondent and Payable-Through Account Sanctions Relating to Iran's Automotive Sector; Certain Iranian Persons; and Trade in Iranian Petroleum, Petroleum Products; and Petrochemical Products". Sections 3, 4 and 5 provide for the modalities of "'Menu-based' Sanctions Relating to Iran's Automotive Sector and Trade in Iranian Petroleum, Petroleum Products, and Petrochemical Products". Section 6 concerns "Sanctions Relating to the Iranian Rial". Section 7 relates to "Sanctions with Respect to the Diversion of Goods Intended for the People of Iran, the Transfer of Goods or Technologies to Iran that are Likely to be Used to Commit Human Rights Abuses, and Censorship". Section 8 relates to "Entities Owned or Controlled by a United States Person and Established or Maintained Outside the United States". Earlier Executive Orders implementing United States commitments under the JCPOA are revoked in Section 9.

23. Section 2 *(e)* of Executive Order 13846 provides that certain subsections of Section 3 shall not apply with respect to any person for conducting or facilitating a transaction for the provision (including any sale) of agricultural commodities, food, medicine or medical devices to Iran.

II. PRIMA FACIE JURISDICTION

1. General introduction

24. The Court may indicate provisional measures only if the provisions relied on by the Applicant appear, prima facie, to afford a basis on which its jurisdiction could be founded, but need not satisfy itself in a definitive manner that it has jurisdiction as regards the merits of the case (see, for example, *Jadhav (India* v. *Pakistan), Provisional Measures, Order of 18 May 2017, I.C.J. Reports 2017*, p. 236, para. 15).

25. In the present case, Iran seeks to found the jurisdiction of the Court on Article 36, paragraph 1, of the Statute of the Court and on Article XXI, paragraph 2, of the Treaty of Amity (see paragraph 3 above). The Court must first determine whether it has prima facie jurisdiction to rule on the merits of the case, enabling it — if the other necessary conditions are fulfilled — to indicate provisional measures.

26. Article XXI, paragraph 2, of the 1955 Treaty provides that:

> "Any dispute between the High Contracting Parties as to the interpretation or application of the present Treaty, not satisfactorily adjusted by diplomacy, shall be submitted to the International Court of Justice, unless the High Contracting Parties agree to settlement by some other pacific means."

2. Existence of a dispute as to the interpretation or application of the Treaty of Amity

27. Article XXI, paragraph 2, of the 1955 Treaty makes the jurisdiction of the Court conditional on the existence of a dispute as to the interpretation or application of the Treaty. The Court must therefore verify prima facie two different requirements, namely that there exists a dispute between the Parties and that this dispute concerns the "interpretation or application" of the 1955 Treaty.

28. As the Court has repeatedly noted, a dispute between States exists where they hold clearly opposite views concerning the question of the performance or non-performance of certain international obligations (see *Application of the International Convention for the Suppression of the Financing of Terrorism and of the International Convention on the Elimination of All Forms of Racial Discrimination (Ukraine* v. *Russian Federation), Provisional Measures, Order of 19 April 2017, I.C.J. Reports 2017*, p. 115, para. 22, citing *Alleged Violations of Sovereign Rights and Maritime Spaces in the Caribbean Sea (Nicaragua* v. *Colombia), Preliminary Objections, Judgment, I.C.J. Reports 2016 (I)*, p. 26, para. 50). The claim of one party must be "positively opposed" by the other (*South West Africa (Ethiopia* v. *South Africa; Liberia* v. *South Africa), Preliminary Objections, Judgment, I.C.J. Reports 1962*, p. 328).

29. The Court observes that, in the present case, the Parties do not contest that a dispute exists. They differ, however, on the question whether this dispute relates to the "interpretation or application" of the 1955 Treaty.

30. In order to determine whether the dispute between the Parties concerns the "interpretation or application" of the 1955 Treaty, the Court cannot limit itself to noting that one of the Parties maintains that the Treaty applies, while the other denies it (cf. *Immunities and Criminal Proceedings (Equatorial Guinea* v. *France), Provisional Measures, Order of 7 December 2016, I.C.J. Reports 2016 (II)*, p. 1159, para. 47). Rather it must ascertain whether the acts complained of by the Applicant are prima facie capable of falling within the provisions of that instrument and whether, as a consequence, the dispute is one which the Court could have jurisdiction *ratione materiae* to entertain.

* *

31. Iran contends that the dispute between the Parties concerns the "interpretation or application" of the Treaty of Amity. It maintains that the dispute relates to violations by the United States of its obligations under, in particular, Article IV, paragraph 1 (fair and equitable treatment), Article VII, paragraph 1 (prohibition of restrictions on making of payments, remittances, and other transfers of funds), Article VIII, paragraphs 1 and 2 (granting of most-favoured nation treatment for the importation or exportation of products in certain matters), Article IX, paragraph 2 (granting of national or most-favoured nation treatment of nationals and companies with respect to importation or exportation) and 3 (prohibition of discriminatory measures with regard to the ability of importers or exporters to obtain marine insurance), and Article X, paragraph 1 (freedom of commerce), of the 1955 Treaty. Iran explains that these violations result from the decision of the United States of 8 May 2018 to "re-impose and enforce sanctions" that the United States had previously decided to lift in connection with the JCPOA, as well as from the announcement by the President of the United States that "further sanctions" would be imposed. According to Iran, the Plan itself constitutes merely the context in which the "sanctions" were taken. It insists that the decision of the United States to withdraw from the JCPOA is not the subject-matter of the dispute referred to the Court.

32. With regard to Article XX, paragraph 1, of the 1955 Treaty, which sets out a list of measures the application of which is not precluded by the Treaty, Iran contends that this provision does not exclude that a dispute as to these measures may concern the "interpretation or application" of the Treaty. It argues that such a dispute can arise regarding the application of Article XX, paragraph 1, and can relate to the lawfulness of measures purportedly adopted thereunder. Accordingly, Iran claims, the Court may have jurisdiction over a dispute regarding those measures. Iran recalls that, in its 1996 Judgment on the preliminary objection in the case concerning *Oil Platforms (Islamic Republic of Iran* v. *United States of America)*, the Court already found that the 1955 Treaty does not contain any "provision expressly excluding certain matters from the jurisdiction of the Court". Iran further recalls that the Court found that Article XX, paragraph 1, subparagraph *(d)*, which provides that the 1955 Treaty shall not preclude the application of measures necessary, *inter alia*, to protect a Party's essential security interests, did not restrict its jurisdiction in that case, but was confined to affording the Parties a possible defence on the merits to be used should the occasion arise (*I.C.J. Reports 1996 (II)*, p. 811, para. 20). Iran contends that there is no reason in the present case for the Court to depart from its earlier findings, according to which the provisions of Article XX of the 1955 Treaty envisage exceptions to the substantive obligations contained in other Articles of the Treaty rather than to the Court's jurisdiction under Article XXI, paragraph 2, thereof.

33. Iran further argues that, in any event, the "sanctions" announced on 8 May 2018 do not fall under the exceptions contained in Article XX, paragraph 1, subparagraphs *(b)* and *(d)*, of the 1955 Treaty, invoked by the United States. With regard to Article XX, paragraph 1, subparagraph *(b)*, which does not preclude the application of measures "relating to fissionable materials, the radio-active by-products thereof, or the sources thereof", Iran maintains that the "sanctions" do not, as a point of fact, relate to fissionable materials and do not concern the sources or by-products thereof. Iran notes that none of the transactions targeted by the "sanctions" concerns those materials. With regard to the exception in Article XX, paragraph 1, subparagraph *(d)*, Iran

contends that, even if a "wide discretion" as to the application of this provision were granted to the State invoking it, the provision must be applied in accordance with that State's obligation of good faith. That State must establish that the measures were indeed "necessary to protect its essential security interests". Iran further points out that the allegations made by the United States as to Iran's nuclear-related activities are contradicted by extensive documentation from the Joint Commission and the IAEA. Iran therefore maintains that the United States has not been able to establish that the measures were "necessary to protect its essential security interests".

*

34. The United States asserts that the dispute between the Parties does not relate to the "interpretation or application" of the 1955 Treaty. In this regard, the United States first argues that the dispute arose within the framework of, and is exclusively related to, the JCPOA. Secondly, it maintains that the measures announced on 8 May 2018, which constitute the alleged violations of the 1955 Treaty, are covered, in any event, by the exceptions listed in Article XX, paragraph 1, of that Treaty, in particular in subparagraphs *(b)* and *(d)*, and that therefore the dispute falls outside the material scope of the 1955 Treaty.

35. The United States contends that the JCPOA is a distinct multilateral instrument and contains no compromissory clause providing for the jurisdiction of the Court. The United States argues that the decision announced on 8 May 2018 was taken in light of Iran's conduct after the adoption of the JCPOA and was based on national security concerns with respect to specific elements of the Plan. According to the United States, the JCPOA provides for a different mechanism for the settlement of a dispute, which "in text and structure necessarily excludes consent to the jurisdiction of [the] Court in favour of the resolution of the dispute through political channels".

36. With regard to the scope of Article XX, paragraph 1, of the 1955 Treaty, the United States maintains that this Article provides that the Treaty shall not preclude the "application" of the measures enumerated therein and that, as a result, the compromissory clause concerning any dispute about the "interpretation or application" of the Treaty "does not operate with respect to such excluded measures". The United States contends that Article XX, paragraph 1, of the 1955 Treaty is thus an express provision excluding certain measures from the scope of the Treaty and considers that this provision excludes the jurisdiction of the Court over Iran's claims in the present case. In view of this, the United States concludes that there can be no dispute as to the "interpretation or application" of the Treaty with regard to those measures and that, accordingly, the Court has no prima facie jurisdiction.

37. More specifically, with regard to the exception contained in Article XX, paragraph 1, subparagraph *(b)*, relating to fissionable materials, the United States submits that the flexibly worded text leaves considerable space for the full range of measures that might be developed and adopted to control and prevent proliferation of sensitive nuclear materials. The United States

contends that the "sanctions" announced on 8 May 2018 are aimed at addressing the shortcomings of the JCPOA in this respect. As to Article XX, paragraph 1, subparagraph *(d)*, the United States considers that it grants "wide discretion" to the invoking State. According to the United States, the reimposition of the nuclear-related economic "sanctions" that were lifted pursuant to the JCPOA is based on a core national security decision, as set out in the Presidential Memorandum of 8 May 2018, and falls within the "essential security" provision.

* *

38. The Court considers that the fact that the dispute between the Parties arose in connection with and in the context of the decision of the United States to withdraw from the JCPOA does not in and of itself exclude the possibility that the dispute relates to the interpretation or application of the Treaty of Amity (cf. *Oil Platforms (Islamic Republic of Iran* v. *United States of America), Preliminary Objection, Judgment, I.C.J. Reports 1996 (II)*, pp. 811-812, para. 21). In general terms, certain acts may fall within the ambit of more than one legal instrument and a dispute relating to those acts may relate to the "interpretation or application" of more than one treaty or other instrument. To the extent that the measures adopted by the United States following its decision to withdraw from the JCPOA might constitute violations of certain obligations under the 1955 Treaty, such measures relate to the interpretation or application of that instrument.

39. The Court also observes that the JCPOA does not grant exclusive competence to the dispute settlement mechanism it establishes with respect to measures adopted in its context and which may fall under the jurisdiction of another dispute settlement mechanism. Therefore, the Court considers that the JCPOA and its dispute settlement mechanism do not remove the measures complained of from the material scope of the Treaty of Amity nor exclude the applicability of its compromissory clause.

40. The Court also notes that, while Iran contests the conformity of the measures adopted with several provisions of the 1955 Treaty, the United States expressly relies on Article XX, paragraph 1, of that Treaty. Subparagraphs *(b)* and *(d)* of that provision read as follows:

> "The present Treaty shall not preclude the application of measures:
>
> . . . . . .
>
> *(b)* relating to fissionable materials, the radioactive by-products thereof, or the sources thereof;
>
> . . . . . .
>
> *(d)* necessary to fulfill the obligations of a High Contracting Party for the maintenance or restoration of international peace and security, or necessary to protect its essential security interests."

41. As the Court has had the opportunity to observe in the *Oil Platforms* case, the 1955 Treaty contains no provision expressly excluding certain matters from its jurisdiction. The Court took the view that Article XX, paragraph 1, subparagraph *(d)*, did "not restrict its jurisdiction" in that case. It considered instead that that provision was "confined to affording the Parties a possible defence on the merits to be used should the occasion arise" (see *Oil Platforms (Islamic Republic of Iran* v. *United States of America), Preliminary Objection, Judgment, I.C.J. Reports 1996 (II)*, p. 811, para. 20).

42. The Court observes that Article XX, paragraph 1, defines a limited number of instances in which, notwithstanding the provisions of the Treaty, the Parties may apply certain measures. Whether and to what extent those exceptions have lawfully been relied on by the Respondent in the present case is a matter which is subject to judicial examination and, hence, forms an integral part of the material scope of the Court's jurisdiction as to the "interpretation or application" of the Treaty under Article XXI, paragraph 2 (see also *Military and Paramilitary Activities in and against Nicaragua (Nicaragua* v. *United States of America), Merits, Judgment, I.C.J. Reports 1986*, p. 116, para. 222).

43. The Court considers that the 1955 Treaty contains rules providing for freedom of trade and commerce between the United States and Iran, including specific rules prohibiting restrictions on the import and export of products originating from the two countries, as well as rules relating to the payment and transfer of funds between them. In the Court's view, measures adopted by the United States, for example, the revocation of licences and authorizations granted for certain commercial transactions between Iran and the United States, the ban on trade of certain items, and limitations to financial activities, might be regarded as relating to certain rights and obligations of the Parties to that Treaty. The Court is therefore satisfied that at least the aforementioned measures which were complained of by Iran are indeed prima facie capable of falling within the material scope of the 1955 Treaty.

44. The Court finds that the above-mentioned elements are sufficient at this stage to establish that the dispute between the Parties relates to the interpretation or application of the Treaty of Amity.

3. The issue of satisfactory adjustment by diplomacy under Article XXI, paragraph 2, of the Treaty of Amity

45. The Court recalls that, under the terms of Article XXI, paragraph 2, of the 1955 Treaty, the dispute submitted to it must not have been "satisfactorily adjusted by diplomacy". In addition, Article XXI, paragraph 2, states that any dispute relating to the interpretation or application of the Treaty shall be submitted to the Court, "unless the [Parties] agree to settlement by some other pacific means". The Court notes that neither Party contends that they have agreed to settlement by any other peaceful means.

* *

46. Iran argues that, with regard to the provision contained in Article XXI, paragraph 2, of the 1955 Treaty that the dispute must not have been "satisfactorily adjusted by diplomacy" before being submitted to the Court, it is sufficient for the Court to take note of the fact that this is the case. It recalls that the Court has already ruled that, in contrast to compromissory clauses contained in other treaties which are differently worded, Article XXI, paragraph 2, of the 1955 Treaty sets out a purely objective condition: the non-resolution of the dispute by diplomatic means.

47. In addition, Iran points out that it sent two Notes Verbales to the Embassy of Switzerland in Tehran (Foreign Interests Section), which serves as the channel of communication between the Governments of the Parties, on 11 June 2018 and 19 June 2018 respectively. Iran observes that, in its Note Verbale of 11 June 2018, it stated, in particular, that the "unilateral sanctions of the United States against Iran [were] in violation of US international obligations [and entail] the international responsibility" of the United States. It underlines that its Note Verbale of 19 June 2018 included an express reference to the obligations of the United States contained in the 1955 Treaty; that Note not only called upon the United States to take all necessary measures to cease immediately its breach of international obligations but also stated that, should the United States not revoke its decision of 8 May 2018 not later than 25 June 2018, Iran would "exercise its legal rights under applicable rules of international law". Iran adds that, contrary to what the United States contends, it is rather unlikely that it did not receive the second Note Verbale until a month later, and after the filing of Iran's Application, since the channel of communication between the two States has usually worked properly. Iran asserts that none of these Notes Verbales ever received a response from the United States, which confirms that the dispute between the two States has not been settled by diplomatic means.

48. Iran maintains that it has fully demonstrated that the dispute has not been "satisfactorily adjusted by diplomacy" within the meaning of Article XXI, paragraph 2, of the 1955 Treaty.

*

49. The United States disagrees with that position. In particular, it claims that an applicant may only bring a claim under Article XXI, paragraph 2, following a genuine attempt to negotiate on the subject-matter of the dispute with the objective of settling the dispute by diplomatic means. The United States further contends that the negotiations must relate to the subject-matter of the Treaty invoked by the Applicant. According to the United States, Iran never afforded the United States an adequate opportunity to consult on alleged violations of the Treaty nor attempted to resolve their claims through diplomacy. The United States observes, in particular, that, of the two Notes Verbales adduced by Iran, only the Note of 19 June 2018 mentions the Treaty and that, moreover, this Note was not received by the United States until 19 July 2018, i.e. after Iran's filing

of its Application. In any event, the United States considers that the Iranian Notes Verbales do not constitute a genuine attempt to negotiate, since they did not "suggest a meeting . . . propose when or how to meet, and [did] not even ask the United States to respond". It adds that, at the highest political levels, the United States "stands ready to engage with Iran in response to a genuine initiative to address the issues of acute concern to the United States".

* *

50. The Court recalls that Article XXI, paragraph 2, of the 1955 Treaty is not phrased in terms similar to those used in certain compromissory clauses of other treaties, which, for instance, impose a legal obligation to negotiate prior to the seisin of the Court (see *Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Georgia* v. *Russian Federation), Preliminary Objections, Judgment, I.C.J. Reports 2011 (I)*, p. 130, para. 148). Instead, the terms of Article XXI, paragraph 2, of the 1955 Treaty are descriptive in character and focus on the fact that the dispute must not have been "satisfactorily adjusted by diplomacy". Thus, there is no need for the Court to examine whether formal negotiations have been engaged in or whether the lack of diplomatic adjustment is due to the conduct of one party or the other. It is sufficient for the Court to satisfy itself that the dispute was not satisfactorily adjusted by diplomacy before being submitted to it (see *Oil Platforms (Islamic Republic of Iran* v. *United States of America), Judgment, I.C.J. Reports 2003*, pp. 210-211, para. 107).

51. In the present case, the communications sent by the Government of Iran to the Embassy of Switzerland (Foreign Interests Section) in Tehran (see paragraph 47) did not prompt any response from the United States and there is no evidence in the case file of any direct exchange on this matter between the Parties. As a consequence, the Court notes that the dispute had not been satisfactorily adjusted by diplomacy, within the meaning of Article XXI, paragraph 2, of the 1955 Treaty, prior to the filing of the Application on 16 July 2018.

4. Conclusion as to prima facie jurisdiction

52. In light of the foregoing, the Court concludes that, prima facie, it has jurisdiction pursuant to Article XXI, paragraph 2, of the 1955 Treaty to deal with the case, to the extent that the dispute between the Parties relates to the "interpretation or application" of the said Treaty.

III. THE RIGHTS WHOSE PROTECTION IS SOUGHT AND THE MEASURES REQUESTED

53. The power of the Court to indicate provisional measures under Article 41 of the Statute has as its object the preservation of the respective rights of the parties in a given case, pending its final decision. It follows that the Court must be concerned to preserve by such measures the rights which may subsequently be adjudged by it to belong to either party. Therefore, the Court may

exercise this power only if it is satisfied that the rights asserted by the party requesting such measures are at least plausible (see, for example, *Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Ukraine* v. *Russian Federation), Provisional Measures, Order of 19 April 2017, I.C.J. Reports 2017*, p. 126, para. 63).

54. At this stage of the proceedings, the Court is thus not called upon to determine definitively whether the rights which Iran wishes to see preserved exist; it need only decide whether the rights claimed by Iran on the merits and which it is seeking to preserve, pending the final decision of the Court, are plausible. Moreover, a link must exist between the rights whose protection is sought and the provisional measures being requested (*ibid.*, p. 126, para. 64).

* *

55. Iran contends that the rights it seeks to protect under the 1955 Treaty are plausible in so far as they are grounded in a possible interpretation and in a natural reading of the Treaty. In addition, Iran argues that the evidence before the Court establishes that the "sanctions" reimposed following the decision of the United States of 8 May 2018 constitute a violation of Iran's rights under the Treaty.

56. In particular, Iran invokes Article IV, paragraph 1, of the 1955 Treaty, which provides for the fair and equitable treatment for Iranian nationals and companies as well as for their property and enterprises, prohibits unreasonable or discriminatory measures that would impair the legally acquired rights (including contractual rights) and interests of Iranian nationals and companies, and requires the United States to ensure that the lawful contractual rights of Iranian nationals and companies are afforded effective means of enforcement. According to Iran, the "sanctions", such as those contained in Section 1 (ii) of Executive Order 13846 of 6 August 2018, which are to be applied in the event that any person provides material assistance, sponsors, or provides financial, material or technological support for, or goods or services in support of, among others the National Iranian Oil Company and the Central Bank of Iran after 5 November 2018, are incompatible with the rights of Iran under Article IV, paragraph 1.

57. Iran further observes that Article VII, paragraph 1, of the 1955 Treaty prohibits restrictions on the making of payments, remittances, and other transfers of funds to or from the territory of Iran. Iran notes that the "sanctions", notably the "sanctions" on the purchase or acquisition of US dollar banknotes and the sanctions on significant transactions related to the purchase or sale of Iranian rial, plainly entail the imposition of restrictions on the making of payments, remittances, and other transfers to or from Iran.

58. Iran moreover points out that Article VIII, paragraph 1, requires the United States to accord to Iranian products, and to products destined for export to Iran, treatment no less favourable than that accorded to like products of or destined for export to any third country. According to Iran,

Article VIII, paragraph 2, prohibits the United States from imposing restrictions or prohibitions on the import of any Iranian product or on the export of any product to Iran, unless the import or export of the like product from or to all third countries is similarly restricted or prohibited. Iran contends that the revocation of the relevant licences and authorizations which allowed entities to engage in the sale and export to Iran of, among other things, commercial aircraft and related parts and services, as well as the importation of Iranian foodstuffs and carpets to the United States, "plainly interfere[s] with the import and export of Iranian and US products" between the two territories.

59. Iran also considers that Article IX, paragraph 2, requires the United States to accord Iranian nationals and companies treatment no less favourable than that accorded to nationals and companies of any third country with respect to all matters relating to import and export. Iran contends that the "sanctions", such as imposing restrictions on foreign individuals and companies which import from or export to Iran, in fact single it out for the least favourable treatment, targeting the Iranian financial, banking, shipping and oil sectors.

60. Iran further claims that Article IX, paragraph 3, prohibits any measure of a discriminatory nature that hinders or prevents Iranian importers and exporters from obtaining marine insurance from United States companies. It argues that the United States reintroduced "sanctions" on persons who provide underwriting services or reinsurance for the National Iranian Oil Company or the National Iranian Tanker Company, thereby interfering with Iran's right under that Article.

61. Finally, Iran alleges that the "sanctions" infringe its rights under Article X, paragraph 1, of the Treaty of Amity, which guarantees the freedom of commerce and navigation between the territories of the two contracting Parties. With regard to its right to freedom of commerce, Iran argues, in particular, that the term "commerce" is to be understood in a broad sense and that any act which would impede freedom of commerce is prohibited. Iran argues that multiple elements of the United States "sanctions" have a direct or indirect impact on individual acts of commerce.

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62. The United States, for its part, contends that Iran does not plausibly have any rights with respect to the measures announced on 8 May 2018. First, the United States reiterates that Iran's asserted rights in fact arise from the JCPOA and relate to benefits it received under that instrument. The United States argues that Iran's Application makes clear that its case exclusively concerns the United States' sovereign decision to cease participation in the JCPOA. The United States contends

that Iran cannot demonstrate that its rights plausibly arise from the Treaty of Amity. According to the United States, the alleged violation is the United States' decision to withdraw from the JCPOA and the relief that Iran is claiming is "a restoration of the benefits . . . received under the JCPOA".

63. Secondly, the United States claims that the plausibility of Iran's rights under the 1955 Treaty cannot be established because the measures complained of are lawful by virtue of Article XX, paragraph 1, of the 1955 Treaty. In the view of the United States, the fact that the Treaty of Amity excludes measures under Article XX, paragraph 1, from the scope of the Parties' obligations should lead the Court to find that Iran's claims are "not sufficiently serious" on the merits. It maintains, in particular, that the treaty rights claimed by Iran are expressly limited by the exceptions granted to the United States to take measures "relating to fissionable materials" (subparagraph *(b)*) or "necessary to protect its essential security interests" (subparagraph *(d)*). The United States therefore concludes that, also in this respect, Iran's asserted rights are not plausible.

* *

64. The Court observes at the outset that the claims set out in the Application of Iran make reference solely to alleged violations of the 1955 Treaty; they do not refer to any provisions of the JCPOA.

65. Under the provisions of the 1955 Treaty invoked by Iran, both contracting Parties enjoy a number of rights with regard to financial transactions, the import and export of products to and from each other's territory, the treatment of nationals and companies of the Parties and, more generally, freedom of commerce and navigation. The Court further notes that the United States does not, as such, contest that Iran holds these rights under the 1955 Treaty or that the measures adopted are capable of affecting these rights. Instead, the United States claims that Article XX, paragraph 1, of the 1955 Treaty, entitles it to apply certain measures, *inter alia*, to protect its essential security interests, and argues that the plausibility of the alleged rights of Iran must be assessed in light of the plausibility of the rights of the United States.

66. Article IV, paragraph 1, Article VII, paragraph 1, Article VIII, paragraphs 1 and 2, Article IX, paragraphs 2 and 3, and Article X, paragraph 1, of the 1955 Treaty, invoked by Iran, read as follows:

"*Article IV*

1. Each High Contracting Party shall at all times accord fair and equitable treatment to nationals and companies of the other High Contracting Party, and to their property and enterprises; shall refrain from applying unreasonable or discriminatory measures that would impair their legally acquired rights and interests; and shall assure that their lawful contractual rights are afforded effective means of enforcement, in conformity with the applicable laws.

. . . . . .

Article VII

1. Neither High Contracting Party shall apply restrictions on the making of payments, remittances, and other transfers of funds to or from the territories of the other High Contracting Party, except *(a)* to the extent necessary to assure the availability of foreign exchange for payments for goods and services essential to the health and welfare of its people, or *(b)* in the case of a member of the International Monetary Fund, restrictions specifically approved by the Fund.

. . . . . .

Article VIII

1. Each High Contracting Party shall accord to products of the other High Contracting Party, from whatever place and by whatever type of carrier arriving, and to products destined for exportation to the territories of such other High Contracting Party, by whatever route and by whatever type of carrier, treatment no less favorable than that accorded like products of or destined for exportation to any third country, in all matters relating to: *(a)* duties, other charges, regulations and formalities, on or in connection with importation and exportation; and *(b)* internal taxation, sale, distribution, storage and use. The same rule shall apply with respect to the international transfer of payments for imports and exports.

2. Neither High Contracting Party shall impose restrictions or prohibitions on the importation of any product of the other High Contracting Party or on the exportation of any product to the territories of the other High Contracting Party, unless the importation of the like product of, or the exportation of the like product to, all third countries is similarly restricted or prohibited.

. . . . . .

Article IX

. . . . . .

2. Nationals and companies of either High Contracting Party shall be accorded treatment no less favorable than that accorded nationals and companies of the other High Contracting Party, or of any third country, with respect to all matters relating to importation and exportation.

3. Neither High Contracting Party shall impose any measure of a discriminatory nature that hinders or prevents the importer or exporter of products of either country from obtaining marine insurance on such products in companies of either High Contracting Party.

. . . . . .

Article X

1. Between the territories of the two High Contracting Parties there shall be freedom of commerce and navigation."

67. The Court notes that the rights whose preservation is sought by Iran appear to be based on a possible interpretation of the 1955 Treaty and on the prima facie evidence of the relevant facts. Further, in the Court's view, some of the measures announced on 8 May 2018 and partly implemented by Executive Order 13846 of 6 August 2018, such as the revocation of licences granted for the import of products from Iran, the limitation of financial transactions and the prohibition of commercial activities, appear to be capable of affecting some of the rights invoked by Iran under certain provisions of the 1955 Treaty (see paragraph 66 above).

68. However, in assessing the plausibility of the rights asserted by Iran under the 1955 Treaty, the Court must also take into account the invocation by the United States of Article XX, paragraph 1, subparagraphs *(b)* and *(d)*, of the Treaty. The Court need not carry out at this stage of the proceedings a full assessment of the respective rights of the Parties under the 1955 Treaty. However, the Court considers that, in so far as the measures complained of by Iran could relate "to fissionable materials, the radio-active by-products thereof, or the sources thereof" or could be "necessary to protect . . . essential security interests" of the United States, the application of Article XX, paragraph 1, subparagraphs *(b)* or *(d)*, might affect at least some of the rights invoked by Iran under the Treaty of Amity.

69. Nonetheless, the Court is of the view that other rights asserted by Iran under the 1955 Treaty would not be so affected. In particular, Iran's rights relating to the importation and purchase of goods required for humanitarian needs, and to the safety of civil aviation, cannot plausibly be considered to give rise to the invocation of Article XX, paragraph 1, subparagraphs *(b)* or *(d)*.

70. In light of the foregoing, the Court concludes that, at the present stage of the proceedings, some of the rights asserted by Iran under the 1955 Treaty are plausible in so far as they relate to the importation and purchase of goods required for humanitarian needs, such as (i) medicines and medical devices; and (ii) foodstuffs and agricultural commodities; as well as goods and services required for the safety of civil aviation, such as (iii) spare parts, equipment and associated services (including warranty, maintenance, repair services and safety-related inspections) necessary for civil aircraft.

* *

71. The Court now turns to the issue of the link between the rights claimed and the provisional measures requested.

* *

72. Iran maintains that there is a clear link between all the measures requested and its rights under the 1955 Treaty. In particular, Iran states that it requests five provisional measures aimed at ensuring that the United States will take no action that would further prejudice Iran's treaty rights. According to Iran, the first measure requested is directly linked to all of the rights invoked by Iran under the 1955 Treaty, the second measure requested would protect the rights invoked by Iran under Articles IV, VIII and X, and the third measure requested is intended to ensure the effectiveness of the first two measures. Iran contends that the fourth measure requested is aimed at generating the confidence necessary to protect Iran's rights under the Treaty from further prejudice due to the "chilling effect" of the "sanctions" and the announcement by the United States of further "sanctions". Finally, Iran argues that the fifth measure requested is a standard clause providing further protection of Iran's rights from actions taking place before a final decision by the Court. Iran also contends that the measures requested are different from the claims of Iran on the merits, in so far as they are aimed at suspending the "sanctions" and not at terminating them.

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73. The United States notes that the measures requested are not sufficiently linked to the rights whose protection is sought. In particular, it argues that Iran requests, in effect, the restoration of "sanctions" relief provided for by the JCPOA and the issuance of numerous specific waivers and licences. The United States argues that Iran has not provided any basis for the Court to conclude that the measures requested, namely the restoration of the JCPOA relief, "would vindicate those

rights", in light of the exceptions under Article XX, paragraph 1, protecting the United States' right to take measures to address matters of national security.

* *

74. The Court recalls that Iran has requested the suspension of the implementation and enforcement of all measures announced on 8 May 2018 and the full implementation of transactions already licensed. Iran has further requested the Court to order that the United States must, within three months, report on the action taken with regard to those measures and assure "Iranian, US and non-US nationals and companies that it will comply with the Order of the Court" and that it "shall cease any and all statements or actions that would dissuade US and non-US persons and entities from engaging or continuing to engage economically with Iran and Iranian nationals or companies". Finally, Iran requests that the United States must refrain from taking any other measure that might prejudice the rights of Iran and Iranian nationals under the 1955 Treaty.

75. The Court has already found that at least some of the rights asserted by Iran under the 1955 Treaty are plausible (see paragraphs 69-70 above). It recalls that this is the case with respect to the asserted rights of Iran, in so far as they relate to the importation and purchase of goods required for humanitarian needs, such as (i) medicines and medical devices; and (ii) foodstuffs and agricultural commodities; as well as goods and services required for the safety of civil aviation, such as (iii) spare parts, equipment and associated services (including warranty, maintenance, repair services and safety-related inspections) necessary for civil aircraft. In the view of the Court, certain aspects of the measures requested by Iran aimed at ensuring freedom of trade and commerce, particularly in the above-mentioned goods and services, may be considered to be linked to those plausible rights whose protection is being sought.

76. The Court concludes, therefore, that a link exists between some of the rights whose protection is being sought and certain aspects of the provisional measures being requested by Iran.

IV. RISK OF IRREPARABLE PREJUDICE AND URGENCY

77. The Court, pursuant to Article 41 of its Statute, has the power to indicate provisional measures when there is a risk that irreparable prejudice could be caused to rights which are the subject of judicial proceedings (see, for example, *Jadhav (India* v. *Pakistan), Provisional Measures, Order of 18 May 2017, I.C.J. Reports 2017*, p. 243, para. 49), or when the alleged disregard of such rights may entail irreparable consequences.

78. However, the power of the Court to indicate provisional measures will be exercised only if there is urgency, in the sense that there is a real and imminent risk that irreparable prejudice will be caused before the Court gives its final decision (*ibid.*, para. 50). The condition of urgency is met

when the acts susceptible of causing irreparable prejudice can "occur at any moment" before the Court makes a final decision on the case (*Immunities and Criminal Proceedings (Equatorial Guinea* v. *France), Provisional Measures, Order of 7 December 2016, I.C.J. Reports 2016 (II)*, p. 1169, para. 90). The Court must therefore consider whether such a risk exists at this stage of the proceedings.

79. The Court is not called upon, for the purposes of its decision on the Request for the indication of provisional measures, to establish the existence of breaches of the Treaty of Amity, but to determine whether the circumstances require the indication of provisional measures for the protection of rights under this instrument. It cannot at this stage make definitive findings of fact, and the right of each Party to submit arguments in respect of the merits remains unaffected by the Court's decision on the Request for the indication of provisional measures.

* *

80. Iran asserts that there is a real and imminent risk that irreparable prejudice will be caused to the rights in dispute before the Court gives its final decision. It considers that some of the measures taken by the United States are already causing and will continue to cause irreparable prejudice to these rights. In this regard, Iran notes that such prejudice has already taken place since 8 May 2018 and that the United States has made it known that it is "determined to cause even greater prejudice" to Iran, its companies and its nationals in the near future. Iran recalls that, on 6 August 2018, the President of the United States issued Executive Order 13846 entitled "Reimposing Certain Sanctions With Respect to Iran", which entered into force on 7 August 2018. It explains that this Executive Order aims, *inter alia*, at "reimposing sanctions on Iran's automotive sector and on its trade in gold and precious metals, as well as sanctions related to the Iranian rial", and expanding the scope of "sanctions" that were in effect prior to 16 January 2016.

81. According to Iran, the United States' measures create an imminent risk of irreparable prejudice to airline safety and security. It notes that contracts concluded in the aviation sector between United States and Iranian companies have already been cancelled or adversely affected as a direct result of these measures, leaving Iran's commercial airlines and civil passengers with an ageing fleet, limited access to maintenance information, services and spare parts. Iran is of the view that, by preventing Iranian airlines from renewing their already old airline fleets, purchasing spare parts and other necessary equipment and services, training pilots to international standards or using foreign airport services, the lives of Iranian passengers and crew, and other customers of Iranian airlines will be placed in danger. Therefore, according to Iran, if nothing is done to prevent the United States from giving full effect to its measures, the situation could lead to "irreparable human damages" notwithstanding the existence of a procedure for applying for specific licences under the United States safety of flight licensing policy. Iran further alleges that the measures taken

by the United States create an imminent risk to the health of Iranians. With respect to humanitarian goods, it claims that despite the exemption under the United States law, the current system makes it impossible for Iran to import urgently needed supplies. With respect to healthcare, it observes that, despite the exemption under the United States law for medicines, chemicals for the production of medicines and medical supplies, access to medicines, including life-saving medicines, treatment for chronic disease or preventive care, and medical equipment for the Iranian people have become restricted because the United States' measures have deeply affected the delivery and availability of these supplies.

82. Iran further refers to the United States' measures scheduled for 4 November 2018, which would "considerably tighten the screws on Iran" and "amplify[] the prejudice to its rights under the Treaty of Amity". Iran also observes that it is impossible for the Court to deliver its final decision before 4 November 2018, the date after which all the United States' nuclear-related measures that had been lifted or waived in connection with the JCPOA will be reimposed in full effect.

83. Iran asserts that the official announcement by the United States of 8 May 2018 is producing irreparable damage to the whole Iranian economy, both generally and to key sectors, such as the automotive industry, the oil and gas industry, civil aviation and the banking and financial system. It contends that, since the decision was made public, multiple United States and foreign companies and nationals have announced their withdrawal from activities in Iran, including the termination of their contractual relations with Iranian companies and nationals, which the United States could not restore even if ordered to do so by the Court.

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84. The United States, for its part, contends that there is no urgency, in the sense that there is no real and imminent risk that irreparable prejudice will be caused to the rights in dispute before the Court gives its final decision. It observes that the measures that were announced on 8 May 2018 are not new measures but, rather, the reimposition of "sanctions" that had previously been in place. Therefore, according to the United States, there cannot be urgency now if there was no urgency when the said measures were first taken.

85. The United States asserts that Iran cannot satisfy the requirements of irreparable prejudice for a number of reasons. As a general matter, it considers that the Applicant has not provided sufficient evidence to prove a risk of irreparable harm to Iranians, Iranian companies and Iran itself. It adds that there could be multiple causes to which the economic stagnation and difficulties in Iran can be attributed, including mismanagement by the Iranian Government. It is also of the view that, if there was a risk of prejudice, it could not be irreparable because economic harm can be repaired. In any event, the United States maintains that it is difficult to assess the

specific impact of its measures on the Iranian economy, especially since the European Union has recently stated that it would intensify its efforts at maintaining economic relations with Iran.

86. With respect to the alleged risk of irreparable prejudice caused to airline safety, the United States claims that it has maintained a licensing policy providing for a case-by-case issuance of licences to ensure the safety of civil aviation and the safe operation of United States-origin commercial passenger aircraft. It further asserts that, following the reimposition of the remaining "sanctions", after the expiry of the second wind-down period on 4 November 2018, the United States will continue to consider licence applications regarding civil aircraft spare parts and equipment where there is a safety concern. With respect to the alleged risk of irreparable prejudice caused to health, the United States contends that it has maintained broad authorizations and exceptions to allow for humanitarian-related activity. It adds that the United States has a long-standing policy to authorize exports to Iran of humanitarian goods, including agricultural commodities, medicines, medical devices, and replacement parts for such devices. The United States also claims to have licensed non-governmental organizations to provide a range of services to or in Iran, including in connection with activities related to humanitarian projects. It further affirms that it has taken specific steps to mitigate the impact of its measures on the Iranian people. In addition to the humanitarian-related authorizations and exceptions, the United States asserts that a series of United States statutes, executive orders and regulations provide explicit exceptions making it clear that third-State nationals who engage in humanitarian-related activity will not be exposed to United States "sanctions". It specifies that all of these measures have remained intact following the reimposition of "sanctions" after the expiry of the first wind-down period on 6 August 2018, and that they will remain in place following the reimposition of the remaining "sanctions" after the expiry of the second wind-down period on 4 November 2018.

87. The United States finally claims that the provisional measures Iran requests would, if indicated, cause irreparable prejudice to the sovereign rights of the United States to pursue its policy towards Iran, and, in accordance with Article XX, paragraph 1, of the Treaty of Amity, to take measures that it considers necessary to protect its essential security interests. In this regard, the Respondent points out that the issue is not simply whether the rights of the Applicant are in danger of irreparable prejudice but also the impact of the requested measures on the rights of the Respondent. It is of the view that Article 41 of the Statute requires the Court to take account of the rights of the respondent by weighing up those rights against the claimed rights of the applicant.

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88. The Court notes that the decision announced on 8 May 2018 appears to have already had an impact on import and export of products originating from the two countries as well as on the payments and transfer of funds between them, and that its consequences are of a continuing nature. The Court notes that, as of 6 August 2018, contracts concluded before the imposition of measures

involving a commitment on the part of Iranian airline companies to purchase spare parts from United States companies (or from foreign companies selling spare parts partly constituted of United States components) appear to have been cancelled or adversely affected. In addition, companies providing maintenance for Iranian aviation companies have been prevented from doing so when it involved the installation or replacement of components produced under United States licences.

89. Furthermore, the Court notes that, while the importation of foodstuffs, medical supplies and equipment is in principle exempted from the United States' measures, it appears to have become more difficult in practice, since the announcement of the measures by the United States, for Iran, Iranian companies and nationals to obtain such imported foodstuffs, supplies and equipment. In this regard, the Court observes that, as a result of the measures, certain foreign banks have withdrawn from financing agreements or suspended co-operation with Iranian banks. Some of these banks also refuse to accept transfers or to provide corresponding services. It follows that it has become difficult if not impossible for Iran, Iranian companies and nationals to engage in international financial transactions that would allow them to purchase items not covered, in principle, by the measures, such as foodstuffs, medical supplies and medical equipment.

90. The Court considers that certain rights of Iran under the 1955 Treaty invoked in these proceedings that it has found plausible are of such a nature that disregard of them may entail irreparable consequences. This is the case in particular for those rights relating to the importation and purchase of goods required for humanitarian needs, such as (i) medicines and medical devices, and (ii) foodstuffs and agricultural commodities, as well as goods and services required for the safety of civil aviation, such as (iii) spare parts, equipment and associated services (including warranty, maintenance, repair services and safety-related inspections) necessary for civil aircraft.

91. The Court is of the view that a prejudice can be considered as irreparable when the persons concerned are exposed to danger to health and life. In its opinion, the measures adopted by the United States have the potential to endanger civil aviation safety in Iran and the lives of its users to the extent that they prevent Iranian airlines from acquiring spare parts and other necessary equipment, as well as from accessing associated services (including warranty, maintenance, repair services and safety-related inspections) necessary for civil aircraft. The Court further considers that restrictions on the importation and purchase of goods required for humanitarian needs, such as foodstuffs and medicines, including life-saving medicines, treatment for chronic disease or preventive care, and medical equipment may have a serious detrimental impact on the health and lives of individuals on the territory of Iran.

92. The Court notes that, during the oral proceedings, the United States offered assurances that the United States Department of State would "use its best endeavours" to ensure that "humanitarian or safety of flight-related concerns which arise following the reimposition of the United States sanctions" receive "full and expedited consideration by the Department of the Treasury or other relevant decision-making agencies". While appreciating these assurances, the

Court considers nonetheless that, in so far as they are limited to an expression of best endeavours and to co-operation between departments and other decision-making agencies, the said assurances are not adequate to address fully the humanitarian and safety concerns raised by the Applicant. Therefore, the Court is of the view that there remains a risk that the measures adopted by the United States, as set out above, may entail irreparable consequences.

93. The Court further notes that the situation resulting from the measures adopted by the United States, following the announcement of 8 May 2018, is ongoing, and that there is, at present, little prospect of improvement. Moreover, the Court considers that there is urgency, taking into account the imminent implementation by the United States of an additional set of measures scheduled for after 4 November 2018.

94. The indication by the Court of provisional measures responding to humanitarian needs would not cause irreparable prejudice to any rights invoked by the United States.

V. CONCLUSION AND MEASURES TO BE ADOPTED

95. The Court concludes from all of the above considerations that the conditions required by its Statute for it to indicate provisional measures are met. It is therefore necessary, pending its final decision, for the Court to indicate certain measures in order to protect the rights claimed by Iran, as identified above (see paragraphs 70 and 75 above).

96. The Court recalls that it has the power, under its Statute, when a request for provisional measures has been made, to indicate measures that are, in whole or in part, other than those requested. Article 75, paragraph 2, of the Rules of Court specifically refers to this power of the Court. The Court has already exercised this power on several occasions in the past (see, for example, *Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Qatar* v. *United Arab Emirates), Provisional Measures, Order of 23 July 2018*, para. 73; *Application of the International Convention for the Suppression of the Financing of Terrorism and of the International Convention on the Elimination of All Forms of Racial Discrimination (Ukraine* v. *Russian Federation), Provisional Measures, Order of 19 April 2017, I.C.J. Reports 2017*, p. 139, para. 100).

97. In the present case, having examined the terms of the provisional measures requested by Iran and the circumstances of the case, the Court finds that the measures to be indicated need not be identical to those requested.

98. The Court considers that the United States, in accordance with its obligations under the 1955 Treaty, must remove, by means of its choosing, any impediments arising from the measures announced on 8 May 2018 to the free exportation to the territory of Iran of goods required for humanitarian needs, such as (i) medicines and medical devices; and (ii) foodstuffs and agricultural commodities, as well as goods and services required for the safety of civil aviation, such as

(iii) spare parts, equipment and associated services (including warranty, maintenance, repair services and safety-related inspections) necessary for civil aircraft. To this end, the United States must ensure that licences and necessary authorizations are granted and that payments and other transfers of funds are not subject to any restriction in so far as they relate to the goods and services referred to above.

99. The Court recalls that Iran has requested that it indicate measures aimed at ensuring the non-aggravation of the dispute with the United States. When indicating provisional measures for the purpose of preserving specific rights, the Court may also indicate provisional measures with a view to preventing the aggravation or extension of a dispute whenever it considers that the circumstances so require (see *Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Qatar* v. *United Arab Emirates), Provisional Measures, Order of 23 July 2018*, para. 76; *Application of the International Convention for the Suppression of the Financing of Terrorism and of the International Convention on the Elimination of All Forms of Racial Discrimination (Ukraine* v. *Russian Federation), Provisional Measures, Order of 19 April 2017, I.C.J. Reports 2017*, p. 139, para. 103). In this case, having considered all the circumstances, in addition to the specific measures it has decided to take, the Court deems it necessary to indicate an additional measure directed to both Parties and aimed at ensuring the non-aggravation of their dispute.

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100. The Court reaffirms that its "orders on provisional measures under Article 41 [of the Statute] have binding effect" (*LaGrand (Germany* v. *United States of America), Judgment, I.C.J. Reports 2001*, p. 506, para. 109) and thus create international legal obligations for any party to whom the provisional measures are addressed.

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101. The decision given in the present proceedings in no way prejudges the question of the jurisdiction of the Court to deal with the merits of the case or any questions relating to the admissibility of the Application or to the merits themselves. It leaves unaffected the right of the Governments of the Islamic Republic of Iran and the United States of America to submit arguments in respect of those questions.

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102. For these reasons,

THE COURT,

Indicates the following provisional measures:

(1) Unanimously,

The United States of America, in accordance with its obligations under the 1955 Treaty of Amity, Economic Relations, and Consular Rights, shall remove, by means of its choosing, any impediments arising from the measures announced on 8 May 2018 to the free exportation to the territory of the Islamic Republic of Iran of

(i) medicines and medical devices;

(ii) foodstuffs and agricultural commodities; and

(iii) spare parts, equipment and associated services (including warranty, maintenance, repair services and inspections) necessary for the safety of civil aviation;

(2) Unanimously,

The United States of America shall ensure that licences and necessary authorizations are granted and that payments and other transfers of funds are not subject to any restriction in so far as they relate to the goods and services referred to in point (1);

(3) Unanimously,

Both Parties shall refrain from any action which might aggravate or extend the dispute before the Court or make it more difficult to resolve.

Done in English and in French, the English text being authoritative, at the Peace Palace, The Hague, this third day of October, two thousand and eighteen, in three copies, one of which will be placed in the archives of the Court and the others transmitted to the Government of the Islamic Republic of Iran and the Government of the United States of America, respectively.

(Signed) Abdulqawi Ahmed YUSUF,
President.

(Signed) Philippe COUVREUR,
Registrar.

Judge CANÇADO TRINDADE appends a separate opinion to the Order of the Court; Judge *ad hoc* MOMTAZ appends a declaration to the Order of the Court.

(Initialled) A.A.Y.

(Initialled) Ph.C.